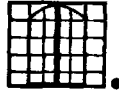


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DEPT. OF TRANSPORTATION
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August 26, 2002

VIA HAND DELIVERY

Administrator
National Highway Traffic Safety Administration
400 7th Street, S.W.
Washington, DC 20590

**Re: *Petition Of National Association Of Trailer Manufacturers
For Reconsideration Of Final Rule,
Early-Warning Reporting Provisions Of TREAD Act
Docket No. NHTSA 2001-8677; Notice 3*** - 512

***Comments Of National Association Of Trailer Manufacturers
On Reports, Forms, And Recordkeeping Requirements
Docket No. NHTSA 2001-8677; Notice 2***

Dear Gentlemen:

Enclosed are an original and three copies of the (1) Petition of the National Association of Trailer Manufacturers for Reconsideration of the final rule issued in the captioned proceeding and (2) Comments of the National Association of Trailer Manufacturers regarding the collection-of-information burdens associated with the final rule.

In accordance with the *Federal Register* notices of June 25, 2002 and July 10, 2002, we are also furnishing one copy each of the Petition for Reconsideration and the Comments to Docket Management, Room PL-401, 400 7th Street, S.W., Washington, DC 20590.

Please add my name to the service list on behalf of the National Association of Trailer Manufacturers for the receipt of all orders, notices, and other documents from NHTSA in the captioned proceedings.

Sincerely,

Kim D. Mann
General Counsel
National Association of Trailer Manufacturers

cc: NHTSA Docket Management (via hand delivery)
Ms. Pamela O'Toole, Executive Director, NATM
Board of Directors, National Association of Trailer Manufacturers

Enclosures

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

DOCKET NO. NHTSA 2001-8677; Notice 3

PETITION FOR RECONSIDERATION

**BY: NATIONAL ASSOCIATION
OF TRAILER MANUFACTURERS
Pamela O'Toole
Executive Director
2945 SW Wanamaker Drive - Suite A
Topeka, KS 66614-5321
(785) 271-0208**

DATED: AUGUST 26, 2002

**BEFORE THE U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

DOCKET No. NHTSA 2001-8677; NOTICE 3

EARLY-WARNING REPORTING PROVISIONS OF TREAD ACT

**PETITION OF NATIONAL ASSOCIATION OF TRAILER MANUFACTURERS
FOR RECONSIDERATION OF FINAL RULE**

BACKGROUND

The National Association of Trailer Manufacturers ("NATM"), on behalf of its trailer manufacturing members, petitions the National Highway Traffic Safety Administration ("NHTSA") for reconsideration of its final rule, published in the *Federal Register* of July 10, 2002, 67 *Fed. Reg.* 45821, implementing the early-warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. NATM seeks reconsideration to the extent the regulations impose burdensome new reporting requirements upon trailer manufacturers whose vehicles have Gross Vehicle Weight Ratings ("gvwr") of 26,000 pounds or less.

NATM is a trade association comprised of 290 companies engaged in manufacturing small-to-medium-size trailers (26,000 lbs. gvwr or less) and of suppliers to the trailer manufacturers. According to statistics SAE maintains, approximately 5,000 companies registered with SAE manufacture trailers with gvwr's of 26,000 lbs. or less. NATM's members manufacture small trailers of all types. Their end uses are, for most part, described in Category 5 set forth in the final rule, 67 *Fed. Reg.* 45871.

SUMMARY OF POSITION

NATM's manufacturing members and the small-to-medium size trailer manufacturers NATM's membership represents are unintended victims of NHTSA's final rule implementing the TREAD Act's early-warning reporting provisions. More than 50 percent of NATM's trailer manufacturers are, by NHTSA's standards, large-volume producers and, therefore, are subject to the more onerous reporting requirements of the final rule. At the same time and unlike manufacturers of large-size trailers (*i.e.*, those with gvwr's of more than 26,000 lbs.), NATM's

large-volume manufacturing members are, with few exceptions, “small businesses” as defined by the Small Business Administration, *i.e.*, employ fewer than 500 workers, and their trailers are not the types of “motor vehicles” involved in incidents (deaths, serious personal injuries, or property damage) that Congress intends the TREAD Act to address. Accordingly, any information they provide NHTSA pursuant to the final rule is likely to be meaningless.

NHTSA’s early-warning reporting regulations applicable to large-volume manufacturers will, if implemented in their current form, have a serious adverse affect upon small-business trailer manufacturers, a group making up 96 percent of the NATM membership, but also a group to which the vast majority of all manufacturers of trailers under 26,000 lbs. gvwr belongs. For them, compliance will be costly and burdensome and, for most, beyond their financial means. This adverse impact can not be rationalized with the sworn statement of NHTSA’s Administrator, “that this final rule will not have a significant economic impact on a substantial number of small entities.” 67 *Fed. Reg.* 45870-71. The factual assumptions upon which the Administrator’s statement is based are demonstrably patently erroneous and arbitrary.

NATM requests NHTSA on reconsideration to relieve manufacturers of trailers with gvwr’s of 26,000 lbs. or less from the more onerous reporting requirements this final rule assigns to large-volume motor vehicle manufacturers. At the very minimum, it should not require reporting historical production data the manufacturers do not possess or aggregating units produced to calculate reporting categories.

ARGUMENT

I. As Drafted The Rule Does Not Comply With Anti-Burden Provisions of the Statute.

The TREAD Act expressly prohibits NHTSA from imposing unduly burdensome reporting and document-production requirements upon motor vehicle manufacturers, “taking into account the manufacturer’s cost of complying with such requirements and the Secretary’s [of DOT] ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.” 49 U.S.C. § 30166(m)(4)(D). NHTSA’s final rule violates this anti-burden provision to the extent NHTSA compels large-volume trailer manufacturers to generate, maintain, and submit the same records, reports, and documents as other large-volume motor vehicle manufacturers.

In a directly related proceeding, Docket No. NHTSA 2001-8677; Notice 2 (the “Notice 2 Proceeding”), NHTSA solicits public comment upon the information-collection burdens associated with implementing the early-warning reporting requirements of the TREAD Act. *See* 67 *Fed. Reg.* 42843 (June 25, 2002). In the Notice 2 Proceeding, NHTSA recognizes it must obtain OMB approval to collect information contemplated in the early-warning reporting regulations, but acknowledges it has not yet done so. NHTSA also recognizes it must, under the Paperwork Reduction Act of 1995, solicit public comment on the paperwork burdens associated with compliance before seeking OMB approval. Concurrently with the filing of this Petition for Reconsideration, NATM is submitting its written comments to NHTSA in response to the Notice 2 Proceeding’s tentative findings and conclusions. Those comments track the views expressed in NATM’s Petition for Reconsideration regarding the unnecessary and unwarranted burden imposed upon the 26,000 lbs.-and-under gvwr trailer manufacturers.

NHTSA in its final rule acknowledges its statutory obligation not to impose unduly burdensome requirements, but asserts “there is unlikely to be a significant burden associated with the actual reporting of information.” 67 *Fed. Reg.* 46866. As applied to NATM members specifically and to manufacturers of small-to-medium size trailers (under 26,000 lbs. gvwr) generally, this assertion, like the Administrator’s comparable sworn statement, misses the point and is inaccurate. NHTSA’s own statistics together with the facts NATM has developed, as explained below, confirm the agency vastly underestimates that reporting burden, considering the corporate cost of establishing reporting systems and the labor necessary to operate and maintain them.

The agency’s cost-burden analysis as pertinent to the trailer industry starts with a category size estimate: it asserts there are only eight “large trailer manufacturers” in the United States, *i.e.* eight trailer manufacturers producing 500 or more units per year. 67 *Fed. Reg.* 46871. The agency does not disclose how it arrives at this number. It can only be a number pulled from thin air. A recent NATM survey discloses the number “eight” is clearly erroneous and was arbitrarily and irrationally chosen. During the week of August 5, 2002, NATM polled its own manufacturing members to determine how many manufacture 500 or more trailers per year and thus are “large trailer manufacturers” as NHTSA defines that term in its final rule. Of the 290 surveys sent out, NATM has received 265 responses: 154 member companies indicate they

manufacture more than 500 units a year; and only 111 indicate they manufacture fewer than 500 units per year.^{1/} See Affidavit of NATM's Executive Director, Ms. Pam O'Toole, attached to this Petition as *Appendix A*, ¶5.

NATM represents only 290 of the more than approximately 5,000 U.S. businesses engaged in manufacturing trailers of 26,000 lbs. gvwr and less; it does not represent, of course, the large-size (in terms of gvwr rating) trailer manufacturers, many of which such as Strick, Freuhauf, and Great Dane are well known large-volume manufacturers, producing vastly more than 500 units per year. Thus, the actual collective impact of the reporting requirements upon the entire trailer industry will be far greater than the agency acknowledges by a factor of at least 20 times, if the assessment stops with NATM's membership. But it can not stop there. With another 2,600 companies from the class of 5,000 small-trailer manufacturers registered with SAE as manufacturing 26,000 lbs.-and-under gvwr trailers the "large manufacturer" error factor may be close to the 360!^{2/}

Significantly, the 154 so-called large-volume trailer manufacturers belonging to NATM are, with few exceptions, also "small businesses" as SBA defines that term. NATM conducted a second member survey limited to polling those firms that responded to the first and indicated they are large trailer manufacturers (*i.e.* produce more than 500 units per year). The second survey seeks to determine how many of the 153 large-volume member-companies are small businesses under the SBA definition. Approximately 96 percent -- 146 out of the 153 -- have responded indicating they employ fewer than 500 workers and thus are small businesses. See *Appendix A*, Pam O'Toole Affidavit, ¶7.

This significant but vulnerable group is the very component of our Nation's business community that Congress directed NHTSA to protect when formulating distinctions between large and small trailer manufacturers given the magnitude of the disparity of reporting and information-gathering burdens NHTSA imposes upon the two categories. SBA, too, commented on this subject: SBA's comments apparently indicate that by choosing 500 units as the demarcation between large and small manufacturer, NHTSA may nevertheless be saddling a

^{1/} NATM does not attempt to draw any conclusions regarding the manufacturing size (units produced) of those 27 members who have not responded.

^{2/} Extrapolating the NATM percentage, 154 out of 265 manufacturing members (58.11 percent), the SAE trailer registrants qualifying as "large manufacturers" would be approximately 2,905 companies (.5811 x 5,000).

significant number of “small businesses” with the onerous reporting requirements assigned to large-volume motor vehicle manufacturers. Regrettably, NHTSA appears to have attached little or no credence to SBA’s views; instead, NHTSA ducks the issue, at least temporarily, admitting it is unable to determine the total number of small businesses in this category, but promising to continue to study the matter. 67 *Fed. Reg.* 46867.

A future study comes too late. NATM urges NHTSA not to send OMB its final rule for approval without first tackling the issue of the impact upon small businesses head on and rationalizing the serious adverse consequences it understated or overlooked in the context of any perceived benefits. As the rule stands, it violates the anti-burden proviso of the TREAD Act. To impose a significant cost burden upon small businesses for a period of at least three years and then offer to reconsider the subject and provide future relief, if warranted, is of no consolation to small businesses falling within the “large motor vehicle trailer manufacturer” definition today. They, too, must absorb the initial start-up costs NHTSA recognizes all large-volume producers must incur in the very first year, 2003, in order to comply.

NHTSA’s directly related Notice 2 Proceeding, soliciting comment upon NHTSA’s collection-of-information activity, estimates the financial impact upon all motor vehicle manufacturers, including separately trailer manufacturers producing more than 500 units per year. There, NHTSA announces, without explanation or disclosure of its source, its estimate of the number of so-called “large trailer manufacturers” in this country -- a total of eight companies -- the same number NHTSA repeats in its Notice 3 Proceeding. 67 *Fed. Reg.* 42844 (June 25, 2002). It then estimates the first-year costs of compliance with the final rule, approximately \$237,520 per large-volume trailer company!^{3/} Consistent with its failure to recognize that small businesses comprise the vast majority of large-volume trailer manufacturers manufacturing trailers of 26,000 lbs. gvwr and less, NHTSA does not address how these small businesses may be expected to raise more than \$237,000 each within the next six to nine months in order to comply during calendar year 2003.

The projected initial investment necessary to comply will create extreme hardship for the NATM segment of the trailer manufacturing industry. This segment of the industry, and the 26,000 lbs.-and-under gvwr manufacturer in particular, has been hard hit by a severe downturn in

^{3/} The underlying Agency math is straightforward: $(\$1,819,016 + \$81,145) \div 8$ large-volume trailer companies = \$237,520.13 per company.

business because of the country's economic slow-down. With few exceptions, industry has seen profit margins virtually disappear. Finding more than a quarter of a million dollars by early 2003 to siphon off from the bottom line will be beyond the capability of most of these small businesses.

NHTSA's related Notice 2 Proceeding also expects that each of the eight large-volume trailer manufacturers must pay an additional \$10,143 annually to maintain their systems and provide the reports and documents required on an on-going basis under the final early-warning reporting rule. 67 *Fed. Reg.* 42855. NATM believes that, for the large-volume (more than 500 units/year) manufacturers of 26,000 lbs.-and-under gvwr trailers, this annual-cost estimate is off by a magnitude of more than 10 times. The affidavit from one of NATM's member companies, Sundowner Trailers of Coleman, OK, attached as *Appendix B* to this Petition, calculates its anticipated annual maintenance costs, approximately \$145,500. See *Appendix B*, ¶7. Assuming Sundowner's projected costs are comparable to what other large-volume trailer manufacturers will have to absorb annually in order to operate and maintain the new reporting systems, NATM submits that even its larger-volume producer members able to raise the necessary start-up capital will face an excessive burden attempting to comply on an on-going basis, particularly those members who are small businesses.

II. Comprehensive Reporting Unproductive for 26,000 lbs. GVWR Trailers.

Congress designed the TREAD Act to provide NHTSA with early warning of potential motor vehicle defects that could lead to "fatalities or serious injuries." The distinguishing characteristic of NATM-member trailers, separating them from other manufacturers' trailers, is their small size. They all have gvwr's of 26,000 lbs. or less. Their size and resulting end-use limitations effectively place them outside the scope of the purpose of the TREAD Act. These inherent limitations dramatically diminish the likelihood of fatalities or serious injury resulting from defects in the design or manufacture of trailers under 26,000 lbs. gvwr.

While neither NHTSA nor NATM collects, maintains, or, in NATM's case, has access to records of accidents specifically attributable to trailers with gvwr's of 26,000 lbs. or less, NATM believes that, on a miles-operated basis, relatively few incidents if any involving a 26,000 lbs.-or-under gvwr trailer have resulted in plaintiffs or consumers alleging a manufacturing defect in

or a failure of a component or systems in the trailer has caused or contributed to a fatality or serious injury.^{4/}

Nearly all accidents involving the smaller trailer (*i.e.*, 26,000 lbs. gvwr and under) result from operator, driver, or maintenance error, not a design or manufacturing defect. Requiring the more comprehensive TREAD Act reports from these trailer manufacturers will not assist NHTSA in identifying potential safety-related manufacturing defects or in meaningfully using any collected data.

III. The Solution Is To Treat The 26,000 lbs. GVWR Manufacturer As a Small-Volume Producer For Reporting Purposes.

As a remedy and to alleviate the undue burden upon the 26,000 lbs.-and-under trailer manufacturer, NATM urges NHTSA upon reconsideration to expand its definition of small-volume trailer manufacturer to embrace all manufacturers of 26,000 lbs.-and-under gvwr trailers. In other words, the definition should be revised to include not only those manufacturers producing fewer than 500 units per year, but all those that manufacture trailers with gvwr's of 26,000 lbs. or less, irrespective of the number of units produced. Conversely, the large-volume manufacturer definition should be revised to exclude this category of trailer manufacturer.

NATM urges the definitional revisions for three reasons. The vast majority of trailer manufacturers in the 26,000 lbs.-and-under gvwr category are small businesses as the SBA defines that term, and few if any can afford the start-up and annual maintenance costs associated with large-manufacturer reporting. Finally, early-warning reports from the 26,000 lbs.-and-under gvwr trailer industry segment will produce meaningless data because those trailers are unlikely to be involved in a fatality or serious injury attributable to a safety-related manufacturing defect.

NHTSA observes that Congress gave NHTSA considerable discretion in the TREAD Act to assign "different reporting requirements to various categories of manufacturers." 67 *Fed. Reg.* 45831. NATM requests NHTSA, in exercise of this discretion, to place the 26,000 lbs.-and-under gvwr trailer manufacturer in the same reporting category as the manufacturer of small-volume trailers. This relief, if granted, still leaves all manufacturers of the smaller-size trailers

^{4/} The 26,000 lbs.-gvwr trailer rarely travels more than 10,000 miles a year on public roads; in contrast, the commercial trailer of Strick, Freuhauf, or Great Dane typically logs more than 100,000 miles a year on the public highways.

subject to meaningful reporting requirements. They must report incidents involving fatalities and submit copies of field reports of the types specified in §579.24(d). NATM believes these less burdensome reporting requirements are sufficient to alert NHTSA to any evolving problems associated with the manufacturing of the smaller trailers.

NHTSA itself recognizes the historical significance and acceptance of a motor vehicle's gvwr as a legitimate basis for distinguishing regulatory obligations: "The use of GVWR to delineate the applicability of requirements adopted by NHTSA, other Federal agencies, and state governments is a common practice that has stood the test of time." 67 *Fed. Reg.* 45832. NATM does not advocate NHTSA create the 26,000 lbs.-and-under gvwr category for reporting purposes because of some asserted difficulty manufacturers may have in managing their internal recordkeeping systems. Rather, NATM suggests the need to recognize this separate, unique gvwr category because small businesses dominate this segment of the industry and because their accident history has little or nothing in common with passenger cars, sport utility vehicles, pickup trucks, and heavy trucks or trailers, the types of motor vehicles the TREAD Act was designed to enable NHTSA to track.

The category 26,000 lbs.-and-under gvwr is well recognized as a separate and distinct class of vehicle within the trailer industry and the federal government. The IRS imposes its federal excise tax only upon trailers and other vehicles with gvwrs of more than 26,000 lbs. The Department of Transportation uses that same gvwr level as the separation between when a driver requires a CDL and when the driver does not in order to operate a commercial vehicle. Light- and medium-duty pickup trucks are able to tow up to a 20,000-lb. tandem axle gooseneck trailer. That combination results in a gvwr rating of 25,000 lbs.

To place the small-size issue in context within the trailer industry, an extremely small company by any standard is capable of producing more than 500 small trailer units a year. As Ms. O'Toole's attached affidavit indicates, two NATM members report fitting well within NHTSA's large-manufacturer definition even though one has only 10 employees and the other fewer than 15 and their annual revenues apparently are less than \$2,000,000. *See Appendix A* at ¶9, 10. Does NHTSA expect these companies to raise \$250,000 to comply and then find another \$100,000 annually to continue to comply? NATM hopes not; certainly Congress does not expect so.

IV. Production Reporting Requirements Unrealistic, Violate TREAD Act.

NHTSA's final rule requires all large-volume manufacturers to report information to NHTSA on a make-and-model basis dating back 10 years. This provision applies even to trailer manufacturers that are small businesses. 49 CFR § 579.24(a); 67 *Fed. Reg.* 45834, 45880. The final rule provides no express exception to this rolling 10-year reporting requirement. For reasons explained below, NHTSA should modify this requirement for manufacturers producing trailers with gvws of 26,000 lbs. or less. Their initial 2003 production reports due August 31, 2003 should include only the most recent five years' production data; their second-year (12 months later) reports, only the most recent six years' production data; and so forth until gradually after six years their reported production data submitted to NHTSA include a full 10 years of production information.

NHTSA's final-rule mandate presupposes that all motor vehicle manufacturers, including smaller trailer manufacturers, currently maintain production records dating back 10 years. This assumption is incorrect, at least with respect to trailer manufacturers belonging to NATM. With only limited exception, their historical production data and related reports go back no more than five years, complying with current federal record-retention rules and standards, a fact NHTSA readily acknowledges, citing 49 CFR Part 576. *See* 67 *Fed. Reg.* 45866. Congress itself clearly intended the TREAD Act to limit NHTSA to requiring manufacturers to furnish information within their current possession. 49 U.S.C. § 30166(m)(4)(B). While acknowledging this limitation, 67 *Fed. Reg.* 45866, NHTSA's final rule nevertheless omits any such accommodating exception to mandating all large-volume motor vehicle manufacturers to submit 10 years' production data starting with the very first reports in August 2003.

NATM does not object to the rolling 10-year production data requirement *per se*, only to NHTSA's failure to provide sufficient advance notice of this requirement. Trailer manufacturers, especially the small-business entities, must be given sufficient time to begin accumulating and maintaining this data over a 10-year period. By gradually increasing the number of years' production data required (beyond the first five years) one year at a time, NHTSA avoids the administrative and legal problems of assessing a hodge-podge of incomplete data, ferreting out manufacturers that refuse to comply from those that can not, and itself violating the TREAD Act's current-possession limitation.

As indicated, most trailer manufacturers do not currently maintain more than five years' production data of the type NHTSA would require them to report, and an even smaller number maintains that data in computer or electronic files. Ten years ago, computerized information maintenance was in its infancy, particularly among smaller manufacturers. To the extent manufacturers still retain any production data going back more than five years, they are most likely to be in "paper" format and to include only a few years' data preceding the most current five-year period of time. The final rule should be realigned on reconsideration to accommodate this business reality.

V. Corporate Affiliation Unfairly Expands the Large-Manufacturer Category.

NHTSA fears that multinational motor vehicle and equipment manufacturers may rely upon artificial separate corporate functions as a justification for creating separate corporations and thus avoiding full reporting obligations under the final rule. It concludes that, for all purposes, the term "manufacturer" must include not only the primary manufacturing entity, but also all of its subsidiaries and affiliates. The resulting unqualified broad-scope definition of "manufacturer" requires, in effect, all manufacturers to aggregate the number of units they produce with those all their subsidiaries and affiliates produce when determining their category size, as well as to aggregate other data necessary to prepare the reports and documents the manufacturers must submit to NHTSA. *See 67 Fed. Reg. 45825-28.*

NATM does not question the avowed objective of the broad-scope definition of "manufacturer" -- to preclude deceptive non-reporting. NATM believes, however, NHTSA should not stretch the term "manufacturer" to include all affiliates and subsidiaries for all early-warning regulatory purposes, especially not for the distinct purpose of counting whether any given manufacturer is a large- or small-volume producer of motor vehicles. Unlike the need to blunt reporting abuses, aggregating the number of units trailer manufacturers produce serves no meaningful regulatory purpose cited in the final rule.

Whatever justification may exist for requiring aggregation of tire production and automotive manufacturers' units, trailer manufacturers should not be lumped together with these multinationals when assessing all implications of early-warning reporting. The 26, 000 lbs.-and-under gvwr trailer manufacturers frequently establish separate companies for sound business reasons: *e.g.*, to produce different types of trailers more economically, to maintain geographical

separation of distinct production facilities, and to take advantage of other unique operational or manufacturing features of their trailer lines. There is no reason to suspect a safety-related manufacturing defect present in the trailer of one trailer company within a corporate chain will manifest itself in the trailer product of another company in the same corporate structure just because of the corporate relationship. Nor is there any basis for fearing that conglomerates will break up their trailer-manufacturing operations into a sufficient number of separate small companies within their corporate structures to enable each affiliate to qualify as a small-volume producer and thus to incur only minimal reporting obligations. Attributing such devious motivation to the small-trailer manufacturing industry is simply unjustified and contrary to common sense.^{5/}

To prevent this definitional over-reach, NATM advocates that NHTSA on reconsideration refine its definition of “manufacturer” in the event it denies NATM’s request to place the large-volume, small-size trailer manufacturer in the same reporting category as the small-volume producer. The broad-scope definition should be reworded so as not to require aggregating the units of both the primary trailer manufacturing entity and all its affiliated companies when measuring whether the trailer “manufacturer” is a large-volume or small-volume producer. Each separate manufacturing entity’s number of units should stand on its own for that purpose.

NATM does not object to application of the broad-scope definition of “manufacturer” for purposes of requiring all affiliates and subsidiaries to aggregate the numbers of the different types of safety-related information singled out in the final rule -- for reporting the numbers of property damage claims, the numbers of consumer complaints, the numbers of warranty claims, the numbers of field reports, and the numbers of trailers produced. Those “numbers” should be aggregated to avoid the non-reporting concerns NHTSA addresses in its final rule. That same rationale does not, however, apply to the initial determination as to whether the manufacturer is a large- or small-volume trailer producer. To do so unnecessarily and unfairly compounds the reporting burdens for small-business manufacturers.

^{5/} While the more comprehensive reporting obligations associated with the large-vehicle producing category will require substantial start-up costs not associated with the small-vehicle manufacturing category, that cost differential is not sufficient to compel creating a separate corporation for each production facility. Other practical and legal factors will dictate whether separate corporations are appropriate.

CONCLUSION

For the reasons set forth above, NATM respectfully requests that NHTSA amend its final early-warning reporting rule to place large-volume manufacturers of trailers 26,000 lbs. gvwr and less in the "small manufacturer" reporting category. At the very minimum, NHTSA should incrementally increase the historical production data the large manufacturer of trailers 26,000 lbs. gvwr and under must report, after reporting its most recent 5-year period production numbers, and should narrow the definition of "manufacturer" so as to exclude subsidiaries and affiliates when calculating the number of units a trailer manufacturer produces annually for purposes of determining whether it is to be treated for reporting purposes as a large-volume or small-volume manufacturer.

NATM respectfully submits that it has demonstrated beyond cavil that NHTSA has vastly understated the impact of early-warning reporting upon small-to-medium size trailer manufacturers. Because there are closer to 2,900 large-volume manufacturers of trailers just within the category of 26,000 lbs.-and-under gvwr trailers -- 154 companies within the NATM membership alone -- first-year costs (start-up costs plus first-year maintenance costs) will be approximately \$680,000,000 for the trailer-manufacturing industry. And that excludes the manufacturers of large trailers in excess of 26,000 lbs. gvwr. It is no exaggeration to point out that NHTSA's own projection of first-year costs exceeds by many times the net income of the entire trailer manufacturing industry when a correction is made for the number of large-manufacturers that will be affected. Just as remarkably, NHTSA's projection of annual costs of compliance for trailer manufacturers, projected to be \$81,145 per year for the entire industry, is in reality likely to be closer to \$15,400,000 per year, and that is just for the segment composed of manufacturers of trailers 26,000 lbs. gvwr and under.

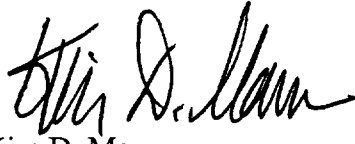
Only by reassigning the small-to-medium size trailer manufacturers to the small-manufacturer reporting category as NATM requests can NHTSA effectively remove the undue burden upon this important segment of the trailer industry.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
TRAILER MANUFACTURERS**

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Due and Filed:
August 26, 2002

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General Counsel
National Association of Trailer
Manufacturers

BEFORE THE U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

DOCKET No. NHTSA 2001-8677; NOTICE 3

AFFIDAVIT OF PAMELA O'TOOLE

1. My name is Pamela O'Toole. I am Executive Director of the National Association of Trailer Manufacturers, headquartered in Topeka, KS. I have been Executive Director of NATM for the past four years. I submit this affidavit in support of NATM's Petition for Reconsideration in the Notice 3 Proceeding.

2. NATM is a nationwide trade association comprised of manufacturers of trailers and the companies that supply parts, equipment, and services to the trailer-manufacturing industry. NATM's Regular Membership category is limited to companies that manufacture trailers with a gross vehicle weight rating of 26,000 pounds or less, the recognized cut-off between large and medium-size trailers. The Association's mission is to encourage and enhance the ability of trailer manufacturers to manufacture a safe trailer product in compliance with the motor vehicle safety standards of NHTSA and the safety regulations of the FMCSA.

3. In response to NHTSA's publication announcing its early-warning reporting regulations, NATM through our office conducted surveys of the trailer manufacturing members of NATM to determine the impact upon those companies, specifically the burden placed upon them to comply with the regulations as they appear in that final rule, published in the *Federal Register* of July 10, 2002.

4. On August 6, 2002, I sent an email to all 290 manufacturing members of NATM (a fax to a few them), advising them that NHTSA intends to implement a new rule requiring trailer manufacturers producing 500 or more trailers a year to report detailed information about their trailers that could signal potential safety related defects. I asked them to respond "yes" or "no" as to whether they, together with their affiliates and subsidiaries, manufacture 500 or more trailer units a year. A copy of my e-mailed survey questionnaire is *Attachment 1* to my Affidavit.

5. As of August 20, 2002, we have received responses from 265 out of 290 members, an unheard level of response. Of the 265 respondents, 154 report they manufacture 500 or more trailer units a year; only 111 indicate they make fewer than 500 units per year.

6. On August 9, 2002, I sent out a second survey to the 154 companies that responded to the first survey indicating they manufactured more than 500 units per year. The second survey explained it was a follow-up to the first and requested they indicate "yes" or "no" as to whether they employ fewer than 500 employees in their trailer operations. A copy of that second e-mail survey questionnaire is *Attachment 2* to my Affidavit..

7. As of August 20, 2002, all 154 "large-manufacturer" member companies have responded, 148 (96.1%) reporting they employ fewer than 500 employees, and the balance reporting they employ 500 or more.

8. The two surveys generated numerous telephone calls, emails, and faxes from the members, expressing great concern about the new reporting requirements and the burdens that collecting the information would cause their companies. *Attachment 3* is one of these email reactions from a NATM member, Mike Crabb of Diamond C Trailer Manufacturing, Mount Pleasant, TX. His e-mail represents an entirely unsolicited response.

9. Several of the member responses to the second survey to determine the number of large-volume manufacturers that are also "small businesses," with fewer than 500 employees, also produced unsolicited comments and information. Some members indicated their actual number of employees. Quite a few of these "large manufacturer" companies volunteered that they have fewer than 50 employees; one so-called "large manufacturer" indicated it has only 10 employees, another fewer than 15 employees, another only 23 employees, and a fourth 26 employees.

10. From my frequent contacts with the NATM membership on this subject, I learned from those discussions that of NATM's smaller members, in terms of numbers of employees and revenues, many are still able to produce more than 500 vehicles a year, typically small utility trailers, but have gross operating revenues of only \$1 million to \$2 million annually. Several told me they can not, as "large manufacturers," afford to comply with NHTSA's early-warning regs given the projected costs, both start-up and annual maintenance costs.

I solemnly swear, under penalty of perjury, that the foregoing are true and correct to the best of my personal knowledge, information, and belief.

8/22/2002
Date

Pamela O'Toole
Pamela O'Toole

PLEASE RESPOND IMMEDIATELY*

NHTSA has adopted a new rule which will impose burdensome reporting requirements on trailer manufacturers producing more than 500 trailers per year. The number 500 is the total number of trailers manufactured, not the total of a particular model.

NATM is considering challenging this rule and we need to know immediately how many of our members will be affected by this new rule.

Does your company (together with all of your affiliated companies) manufacture in the aggregate more than 500 trailers per year - this year or during any of the past two years?

Please respond:

_____ Yes - my company manufactures more than 500 trailers per year.

_____ No - my company does not manufacture a total of more than 500 trailers per year.

Thank you for your assistance.

Pam O'Toole
Executive Director
National Association of Trailer Manufacturers
(785) 271-0208
pam@natm.com

*The complete text and a summary of the rulemaking are available through the NATM office.

Attachment 2

Thank you for responding to our first survey.

It is important to tell NHTSA that most of the larger trailer manufacturers (*i.e.* making more than 500 units per year) are small businesses. The small business criterion is fewer than 500 full time employees.

Do you have fewer than 500 full time employees?

Yes _____

No _____

Pam O'Toole
Executive Director
National Association of Trailer Manufacturers
(785) 271-0208
pam@natm.com

Attachment 3

From: "Pam O'Toole" <pam@natm.com>
To: "Kim Mann" <kmann@scopelitis.com>
Date: 8/20/02 1:15PM
Subject: Fw: ATTENTION ALL NATM MEMBERS - NHTSA Rulemaking

Please let me know if this is not the response that you were looking for. Thank you.
 Allison

----- Original Message -----

From: Mike Crabb
To: Pam O'Toole
Sent: Wednesday, August 07, 2002 12:32 PM
Subject: Re: ATTENTION ALL NATM MEMBERS - NHTSA Rulemaking

Pam , I just read the summary you sent . I think a lot of trailer companies are trying to get back on top after 911 just like a lot of other companies in the US . This new rule by the NHTSA is very untimely . I can't speak for any other manufacturers but this type of red tape and reporting will be very costly to my company . We have nothing to hide and work very hard to produce a safe quality product . The problem is that in our type of trailers the prices we sell our product for , the prices are market dictated . The type of reporting they are talking about will surely require hiring additional office personnel that we cannot afford . I think small business is a main stay and back bone of the economy in the US . If our federal government doesn't stop forcing this kind of bull on us , I'm afraid all the economy is going to do is continue downward . This ruling makes about as much sense as the STEEL tariffs that are affecting anything manufactured in the US that is made of steel . I hope the NATM challenges this rule and defeats it .

Thanks , Mike

----- Original Message -----

From: Pam O'Toole
To: natm@natm.com
Sent: Tuesday, August 06, 2002 4:21 PM
Subject: ATTENTION ALL NATM MEMBERS - NHTSA Rulemaking

PLEASE RESPOND IMMEDIATELY*

NHTSA has adopted a new rule which will impose burdensome reporting requirements on trailer manufacturers producing more than 500 trailers per year. The number 500 is the total number of trailers manufactured, not the total of a particular model.

NATM is considering challenging this rule and we need to know immediately how many of our members will be affected by this new rule.

Does your company (together with all of your affiliated companies) manufacture in the aggregate more than 500 trailers per year - this year or during any of the past two years?

Please respond:

_____ Yes - my company manufactures more than 500 trailers per year.

_____ No - my company does not manufacture a total of more than 500 trailers per year.

Thank you for your assistance.
 Pam O'Toole

BEFORE THE U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

DOCKET No. NHTSA 2001-8677; NOTICE 3

AFFIDAVIT OF VICTOR COOK
MANAGER OF ENGINEERING, SUNDOWNER TRAILERS, INC.

1. My name is Victor Cook. I am Engineering Manager of Sundowner Trailers, Inc., Coleman, OK. I have been with the company for the past 13 years. Sundowner Trailers is a manufacturing member of the National Association of Trailer Manufacturers, and I submit this affidavit in support of NATM's Petition For Reconsideration in the Notice 3 Proceeding.

2. Sundowner Trailers has been in business for 27 years and manufactures horse trailers at its plant in Coleman, OK. Its typical horse trailer has a gross vehicle weight rating of 15,210 pounds. At current production levels, we manufacture more than 4,000 horse trailers a year.

3. As Engineering Manger for Sundowner, I am responsible for the company's compliance with all aspects of the rules and regulations of NHTSA, FMCSA, FHWA, and DOT generally. I also manage the structure and design of our trailers and have responsibility of supporting the parts and repair programs of Sundowner. Twelve employees report to me.

4. Even though Sundowner has only 550 employees, barely outside the "small business" guidelines of the SBA, we are one of the larger members of the National Association of Trailer Manufacturers. We are one of the companies that replied to the surveys that Ms. Pam O'Toole, Executive Director of NATM, sent out from NATM headquarter in Topeka, KS earlier this month in response to NHTSA's rule implementing the early-warning reporting requirements of the TREAD Act.

5. At the request of Mr. Jerry Shipman, Secretary/Treasurer of Sundowner Trailers, I reviewed NHTSA's final rule implementing the early-warning reporting requirements. I read the *Federal Register* notice of July 10, 2002 to acquaint myself with its requirements and then had follow-up discussions with two officials of NHTSA in Washington, DC in an effort to better understand the regulations and what would be required of Sundowner. Based on the information gleaned from the *Federal Register* notice of the final rule and from my discussions with NHTSA staff, I prepared a study of the estimated costs to Sundowner to gear up to comply with the new reporting requirements and to continue furnishing the data and documents required on an annual basis.

6. A summary of my study estimating and analyzing these costs, both initial start-up and first-year costs as well as annual maintenance costs, is attached to my Affidavit. This analysis, titled "**TREAD REPORT**" **Costing**, makes reference to individuals by position who will be given responsibility within Sundowner for performing identified services directly related to our compliance with the new reporting

regulations. It calculates the costs of those services and the approximate amount of time we expect those individuals will have to spend, either part time or full time, in carrying out early-warning report related functions.

7. In order for Sundowner properly to collect, analyze, and report the information NHTSA requires, Sundowner will have to hire two employees not currently on staff, the Team Leader and his/her Administrative Assistant. I estimate, based upon well-known sources, *The Wall Street Journal Sales Report* for our geographical area, these two new-hires will require salaries plus benefits totaling \$105,800 per year. In addition, we anticipate we will assign some 17 different current employees of Sundowner working in various capacities within the organization to spend part of their time on this project. They will have to collect and supply data and other information to the Administrative Assistant and Team Leader and to maintain the computer systems. I estimate their time on this project year in and year out will represent additional annual costs for Sundowner of \$145,430.60 per year over and above the start-up costs.

8. In estimating Sundowner's start-up costs, I have included not only the non-recurring costs of modifying software and training for all personnel, but also the wages and salaries of personnel, calculated on projected time-spent basis, who will be assigned to gather and sort through data, steps necessary to prepare and submit the first-time reports and documents to NHTSA. I estimate Sundowner's initial start-up/first-year costs will be \$202,051. These start-up numbers are not included in my estimate of the yearly costs to continue supplying the information and maintaining the systems. I believe this estimate is very conservative.

9. The initial and annual costs to Sundowner to comply with NHTSA's final early-warning rule will be very burdensome, not only because of the financial strain of covering the out-of-pocket costs we must incur, but also because of the drain on our existing resources, both in terms of equipment and support personnel.

10. We do not believe that any information NHTSA will obtain from Sundowner will have any value or meaning to NHTSA in light of the objectives of the TREAD Act. Although we are one of the larger NATM members, during the 27 years of our business, Sundowner has experienced no fatalities resulting from the use of its trailers and only one reported injury, a very minor injury at that -- a hinge fell off of one of our trailers and hit a women in the leg. We have undergone only two official so-called safety recalls. One was a voluntary action when we discovered that a hitch may have been welded in the wrong spot on possibly two of our vehicles. We located only one unit that fit this description and simply installed a new tongue to "repair" this mis-weld. In the other recall, we discovered that a number of our units did not have the proper tire series designation on the "Certification Label" -- it was miss-labeled P-series instead of the correct designator ST-series. We sent out letters to customers, located 948 units with the wrong VIN sticker, and simply sent the owners new VIN stickers for them to self-apply.

11. Sundowner has no objection to supplying the information NHTSA requires of "small manufacturers." If Sundowner had to supply the information required of "large manufacturers" during the past 27 years of its existence, NHTSA would have received virtually no useful information, not one piece of data suggesting any defect, let alone a serious defect, in the design or manufacture of our Sundowner Trailers.

I solemnly swear, under penalty of perjury, that the foregoing are true and correct to the best of my personal knowledge, information, and belief.

8-23-02
Date

Victor Cook
Victor Cook

“TREAD REPORT” Costing

I. Initial Startup Cost

A. Management

Team Leader--Government Affairs Supervisor—Salary—\$69,598—salary based upon Wall Street Journal salary report.

Team Leader will set up and establish program insuring training and compliance with report requirements. Team leader will continue to monitor data and reports to insure accuracy and continued compliance.

Assistant—Administrative Assistant---Salary---\$36,225---salary based upon Salary.com report.

Administrative Assistant will be responsible for organizing data for quarterly report required and applying it to proper categories of report. Also to insure report is submitted and received in time frame required and storing of information for required time period.

B. Team

District Sales Managers---\$67.50 hr.--- salary base is supplied by payroll department manager.

District Sales Managers will be responsible for gathering all warranties, claims, notices and reports they have received from customers and dealerships covering time frames required for historical first time report and continuing reports. They will send this information to the Assistant. We have (5) District Sales Managers, each will require approximately 20 hours training and an estimated 80 hours each to gather information required from both electronic and paper sources for first-time reports. This will require an estimated 500 hours @ \$67.50 an hour for start-up and first-time costs.

District Administrators---\$15.56 hr.---salary base is supplied by payroll department manager.

District Administrators will be responsible for gathering all warranties, claims, notices and reports they have received from dealerships and District Sales Managers covering time frames required for historical first time report and continuing reports. They will send this information to the Assistant. We have (5) District Administrators, each will require approximately 20 hours training and an estimated 80 hours each to gather information required from both electronic and paper sources for first-time reports. This will require an estimated 500 hours @ \$15.56 an hour for start-up and first-time costs.

ROI (Manufacturing Software) Maintenance Personnel---\$15.96 hr.---salary base is Supplied by payroll department manager.

ROI personnel will be responsible for gathering all production information both historical and current. They will also customize ROI software with the help of Computer Information Service Department (1 person required), to record required information that is not currently available from our manufacturing software. They will also create report programs that can be run to gather all production information that is required for reporting. We will have (2) ROI specialists and (1) CIS person, each will require approximately 20 hours training and an estimated 80 hour each to gather information required and set up system. This will require an estimated 300 hours @ \$15.96 an hour.

Customer Service Representatives---\$14.65 hr.---salary base is supplied by payroll department manager.

Customer Service Representatives will be responsible for gathering all warranties, claims, notices and reports from dealerships and customers, required, both historical and current. They will gather information from warranty databases both electronic and paper file and all other claims, notices and reports both electronic (e-mails & databases) and paper files. They will then send all required information to the Assistant. We have (5) Customer Service Representatives, each will require approximately 20 hours training and an estimated 80 hours each to gather information required for first-time reports and submit to Assistant. This will require an estimated 500 hours @ \$14.65 an hour.

Repair Shop Manager---\$15.50 hr.---salary base is supplied by payroll department manager.

Repair Shop Manager will be responsible for gathering all information involving repairs relating to defects, good will replacement & repair and warranty repair or replacement. Information gathered from both electronic (e-mails & database) and paper files. They will then send all required information to the Assistant. (1) Repair Shop Manager will require approximately 20 hours training and an estimated 80 hours to gather information both historical and current required for first-time reports and submit to Assistant. This will require an estimated 100 hours @ \$15.50 an hour.

Clerical Personnel---\$16.02 hr.---salary base is supplied by payroll department manager.

Clerical Personnel will be responsible for gathering all archived production information required for report. This will involve opening boxed and stored paper production information, locating units required, and extracting data needed. This will require (2) Clerical people an estimated 20 hours training and an estimated 120 hours each to gather historical information required and submit to Assistant. Total time involved estimated at 280 hours @ \$16.02 an hour.

Total estimated start-up/first-time hours required for training, gathering, and submitting information to Assistant is 2180 hours.

II. Materials & System

Custom software database to record and store required information will cost approximately \$10,050.00. Estimate is supplied by Sundowner Computer Information Service Manager based upon an hourly rate of \$75.00 an hour, which is a medium range, cost of writing a data base software. Estimated time required to write and develop software is 134 hours.

Office equipment for Team Leader & Assistant (desk, etc.), estimate provided by Sundowner Resources Manager and is estimated @ \$12,500.00.

Office space for Team Leader & Assistant (14' X 22' metal building w/2 windows) finished inside. Estimated by Sundowners Maintenance and Building Manager at \$14,000.00.

Total estimated cost of start up program is \$202,051.60.

III. Yearly Cost

Yearly cost to Sundowner includes annual salary for Team Leader and Assistant plus part-time salaries of (17) member teams @ an estimated 1360 hours a year and totals \$145,430.60.

Victor R. Cook
Sundowner Trailers, Inc.
Manager Engineering & Legal